

June 7, 2004



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket No. 03-66

Dear Ms. Dortch:

On June 3, 2004, Harold Feld, Associate Director of Media Access Project ("MAP") spoke with Sam Fedder, Advisor to Commissioner Martin, in the above captioned matter.

Mr. Feld discussed the First Amendment implications of these rules as discussed at length in previous filings. While the First Amendment does not dictate a specific outcome to this case, the Commission should must explicitly consider how its decisions will further the goals of the First Amendment, and failure to do so would render any *Order* arbitrary and capricious.

Mr. Feld further pointed out that a "double-sided" auction mechanism violates the plain language of 47 U.S.C. § 309(j)(8)(A), which explicitly requires depositing all auction revenues in the United States Treasury. Mr. Feld also warned that a determination that grant of new capacity and new flexibility triggers the auction requirements of 309(j) would have significant impact on the transition to digital radio. Since transition to digital radio also involves expanding the capacity and flexibility of existing licensees, a decision here might require the Commission to auction modified AM/FM licenses, or at least auction off the excess capacity.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

Harold Feld
Associate Director
Media Access Project

cc: Sam Fedder